

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA (Philadelphia)

Plaintiffs	:	
-----	:	
	:	CIVIL ACTION NO.: 2:02-cv-04852-
	:	(BMS)
THERESA MARIE SIMEONE, et al.,	:	
	:	
v.	:	ANSWER TO FIRST AMENDED
	:	COMPLAINT, CROSS-CLAIMS
Defendants	:	AND JURY DEMAND ON BEHALF
-----	:	OF DEFENDANT BRP-ROTAX
	:	GMBH & CO. KG
BOMBARDIER-ROTAX GmbH, et al .,	:	
	:	
	:	

Defendant BRP-ROTAX GMBH & CO. KG (improperly plead as “Bombardier-Rotax GmbH) [hereinafter “Defendant”], doing business in Gunskirchen, Austria, by way of Answer to the First Amended Complaint alleges and says:

THE PARTIES

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 1.
2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 2.
3. Admitted in part, denied in part. Defendant admits that it is an entity organized under the laws of Austria with a principal place of business in Gunskirchen, Austria. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 3.

4. Defendant makes no response to the allegations contained in Paragraph 4, as the allegations are not directed to this defendant except that any inferences contained therein against this defendant are denied.
5. Defendant makes no response to the allegations contained in Paragraph 5 as the allegations are not directed to this defendant except that any inferences contained therein against this defendant are denied.
6. Defendant denies the allegations contained in Paragraph 6.
7. Defendant makes no response to the allegations contained in Paragraph 7 as the allegations are not directed to this defendant except that any inferences contained therein against this defendant are denied.
8. Defendant makes no response to the allegations contained in Paragraph 8 as the allegations are not directed to this defendant except that any inferences contained therein against this defendant are denied.
9. Defendant makes no response to the allegations contained in Paragraph 9 as the allegations are not directed to this defendant except that any inferences contained therein against this defendant are denied.

JURISDICTION AND VENUE

10. Defendant denies the allegations contained in Paragraph 10.
11. Defendant denies the allegations contained in Paragraph 11.
12. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12.
13. Defendant denies the allegations contained in Paragraph 13.

BACKGROUND

14. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14.
15. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15.
16. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16.
17. Defendant denies the allegations contained in Paragraph 17.
18. Defendant denies the allegations contained in Paragraph 18.
19. Defendant denies the allegations contained in Paragraph 19.
20. Defendant denies the allegations contained in Paragraph 20.
21. Defendant denies the allegations contained in Paragraph 21.
22. Defendant denies the allegations contained in Paragraph 22.
23. Defendant denies the allegations contained in Paragraph 23.
24. Defendant denies the allegation contained in Paragraph 24.
25. Defendant denies the allegation contained in Paragraph 25.
26. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26.
27. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27.
28. The allegations contained in Paragraph 28 contain legal conclusions and Defendant leaves Plaintiffs to their proofs.

29. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29.
30. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30.

THEORIES OF RECOVERY

COUNT I

(STRICT LIABILITY)

PLAINTIFFS V. THE BOMBARDIER DEFENDANTS

31. Defendant repeats its response to each and every allegation contained in Paragraphs 1 through 30 as if same were fully set forth herein at length.
32. The allegations contained in Paragraph 32 contain a legal conclusion and Defendant leaves Plaintiffs to their proofs.
33. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33.
34. Defendant denies the allegations contained in Paragraph 34.
35. Defendant denies the allegations contained in Paragraph 35.
36. Defendant denies the allegations contained in Paragraph 36.
37. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37.
38. Defendant denies the allegations contained in Paragraph 38.

COUNT II

NEGLIGENCE

PLAINTIFFS V. THE BOMBARDIER DEFENDANTS

39. Defendant repeats its response to each and every allegation contained in Paragraphs 1 through 38 as if same were fully set forth herein at length.
40. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 40.
41. Defendant denies the allegations contained in Paragraph 41.
42. Defendant denies the allegations contained in Paragraph 42.
43. Defendant denies the allegations contained in Paragraph 43.
44. Defendant denies the allegations contained in Paragraph 44.
45. Defendant denies the allegations contained in Paragraph 45.

COUNT III

(RECKLESS, WILLFUL AND WANTON MISCONDUCT, FRAUD AND DECEIT)

PLAINTIFFS V. THE BOMBARDIER DEFENDANTS

46. Defendant repeats its response to each and every allegation contained in Paragraphs 1 through 45 as if same were fully set forth herein at length.
47. Defendant denies the allegations contained in Paragraph 47.
48. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48.
49. Defendant denies the allegations contained in Paragraph 49.
50. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50.

- 51. Defendant denies the allegations contained in Paragraph 51.
- 52. Defendant denies the allegations contained in Paragraph 52.
- 53. Defendant denies the allegations contained in Paragraph 53.
- 54. Defendant denies the allegations contained in Paragraph 54.
- 55. Defendant denies the allegations contained in Paragraph 55.
- 56. Defendant denies the allegations contained in Paragraph 56.
- 57. Defendant denies the allegations contained in Paragraph 57.
- 58. Defendant denies the allegations contained in Paragraph 58.
- 59. Defendant denies the allegations contained in Paragraph 59.
- 60. Defendant denies the allegations contained in Paragraph 60.
- 61. Defendant denies the allegations contained in Paragraph 61.
- 62. Defendant denies the allegations contained in Paragraph 62.

COUNT IV

(BREACH OF WARRANTY)

PLAINTIFFS V. THE BOMBARDIER DEFENDANTS

- 63. Defendant repeats its response to each and every allegation contained in Paragraphs 1 through 62 as if same were fully set forth herein at length.
- 64. The allegations contained in Paragraph 64 contain a legal conclusion and Defendants leaves Plaintiffs to their proofs.
- 65. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 65.
- 66. Defendant is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 66.

- 67. Defendant denies the allegations contained in Paragraph 67.
- 68. Defendant denies the allegations contained in Paragraph 68.
- 69. Defendant denies the allegations contained in Paragraph 69.
- 70. Defendant denies the allegations contained in Paragraph 70.

COUNT V [improperly identified as "COUNT VIII"]

NEGLIGENCE

PLAINTIFFS V. THE ENERGY COMPANY DEFENDANTS

- 71. Defendant repeats its response to each and every allegation contained in Paragraphs 1 through 70 as if same were fully set forth herein at length.
- 72. Defendant makes no response to the allegations contained in Paragraph 72 as the allegations are not directed to this defendant except that any inferences contained therein against this defendant are denied.
- 73. Defendant makes no response to the allegations contained in Paragraph 73 as the allegations are not directed to this defendant except that any inferences contained therein against this defendant are denied.
- 74. Defendant makes no response to the allegations contained in Paragraph 74 as the allegations are not directed to this defendant except that any inferences contained therein against this defendant are denied.

SEPARATE DEFENSES

- 1. Plaintiffs' decedents were guilty of contributory negligence.
- 2. Plaintiffs' claims are barred, or in the alternative, the damages to which plaintiffs are entitled must be reduced under the doctrine of comparative negligence.

3. Plaintiffs' complaint is barred due to the Court's lack of jurisdiction over the subject matter.

4. Plaintiffs' complaint is barred due to the Court's lack of jurisdiction over the person.

5. Plaintiffs' complaint is barred by improper venue.

6. Plaintiffs' complaint is barred due to the insufficiency of service of process.

7. Plaintiffs' complaint fails to state a cause of action upon which relief may be granted.

8. The complained of occurrence was caused by third parties over whom defendant had no control.

9. The damages alleged were the result of unforeseeable intervening or superseding acts of others independent of defendant which bars plaintiffs' cause of action.

10. Any product furnished, manufactured, supplied, installed, repaired or sold by defendant was fit for the use intended and any damage sustained by Plaintiffs was caused in whole or in part by the misuse and/or alteration or modification of said product.

11. Plaintiffs' claims are barred by virtue of the state of the art in manufacturing process.

12. Plaintiffs have failed to give proper and prompt notice of any alleged breach of warranty to this answering defendant and accordingly any claims based on breach of warranty are barred according to the provisions of the Uniform Commercial Code.

13. The punitive damage claims are unconstitutional under the due process clauses of the United States and Pennsylvania Constitutions.

14. Plaintiffs' complaint is barred due to assumption of risk.

15. Plaintiffs' claims are barred inasmuch as the characteristics of the product at issue are open and obvious.

16. Plaintiffs' claims are barred inasmuch as plaintiffs' decedents were adequately warned and/or instructed of unavoidably unsafe aspects, if any, of the product at issue.

17. The injuries and/or damages, if any, sustained by plaintiffs were caused solely or in part by the negligence of plaintiffs' decedent, which negligence, along with the Pennsylvania Comparative Negligence Act (42 Pa. C.S.A. §7102) bars or limits Plaintiffs' recovery on the claim set forth in Plaintiffs' First Amended Complaint.

CROSSCLAIM FOR CONTRIBUTION

Defendant BRP-ROTAX GMBH & CO. KG by way of crossclaim for contribution against all co-defendants, except Bombardier Inc. and Bombardier Corp., alleges and says:

1. Defendant denies any and all legal liability and responsibility for the acts alleged in the First Amended Complaint.

2. If Defendant should be found liable to Plaintiffs, which liability is denied, Defendant asserts that all co-defendants except, Bombardier Inc. and Bombardier Corp., herein are joint tortfeasors with respect to any loss, liability or expense on account of Plaintiffs' demand for judgment.

WHEREFORE, Defendant BRP-ROTAX GMBH & CO. KG demands judgment for contribution against all co-defendants except Bombardier Inc. and Bombardier Corporation.

CROSSCLAIM FOR INDEMNIFICATION

Defendant, BRP-ROTAX GMBH & CO. KG, by way of crossclaim for indemnification against all co-defendants, except Bombardier Inc. and Bombardier Corp., alleges and says:

1. Defendant denies any and all legal liability and responsibility for the acts alleged in the First Amended Complaint.

2. If Defendant should be found liable to Plaintiffs herein, which liability is denied, said liability will only be secondary, passive, technical, vicarious, or imputed and the liability of all co-defendants except, Bombardier Inc. and Bombardier Corporation, herein is primary, active and direct.

Wherefore, Defendant BRP-ROTAX GMBH & CO. KG demands judgment against co-defendants except Bombardier Inc. and Bombardier Corporation, herein for indemnification in full with respect to any damages, which may be recovered against Defendant BRP-ROTAX GMBH & CO. KG, by Plaintiffs herein together.

ANSWER TO CROSSCLAIM FOR CONTRIBUTION AND INDEMNIFICATION

Defendant, BRP-ROTAX GMBH & CO. KG, by way of answer to crossclaim for contribution and indemnification heretofore asserted by any co-defendant herein or which any co-defendant shall hereinafter assert or third party defendant herein says:

1. Defendant denies each and every allegation of each such crossclaim and further denies liability in any way to any co-defendant or third party defendant herein.

2. Defendant hereby incorporates by way of reference and asserts each and every separate defense that earlier appears in this pleading as a separate defense to the claims of Plaintiffs herein.

WHEREFORE, Defendant BRP-ROTAX GMBH & CO. KG demands that the Crossclaims be dismissed with prejudice and without costs.

DEMAND FOR TRIAL BY JURY

Defendant demands trial by jury on all issues.

DESIGNATION OF TRIAL COUNSEL

Robert J. Kelly is hereby designated as trial counsel.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP
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DATED: